

**COMMONWEALTH OF THE BAHAMAS**

**2021/CLE/gen/00368**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**SGT 2375 THEODORE M. NEILLY**

**Plaintiff**

**AND**

**INSPECTOR ALEXIS ROBERTS**

**First Defendant**

**AND**

**INSPECTOR MICHAEL JOHNSON**

**Second Defendant**

**AND**

**CHIEF SUPT. CLAYTON L. FERNANDER**

**Third Defendant**

**AND**

**ASSISTANT COMMISISONER LEON BETHEL**

**Fourth Defendant**

**AND**

**THE COMMISSIONER OF POLICE**

**Fifth Defendant**

**AND**

**MINISTRY OF NATIONAL SECURITY**

**Sixth Defendant**

**Before: The Honourable Madam Justice Camille Darville Gomez**

**Appearances: Mr. K. Melvin Munroe for the Plaintiff  
Ms. Kenria Smith for the Defendant**

**Trial Date: 29<sup>th</sup> March, 2022**

**JUDGMENT**

**Darville Gomez, J.**

### **Introduction**

1. The Plaintiff commenced this action by Writ of Summons filed on the 4<sup>th</sup> November, 2016. The Plaintiff claimed (i) a declaration that the unlawful detention of the Plaintiff was unconstitutional and unlawful, (ii) that the Defendants acted maliciously and without proper authority and jurisdiction; (iii) that all Defendants be jointly and severally responsible for loss and damages for this claim; (iv) victimization; (v) breach of constitutional rights; (vi) exemplary damages; (vii) aggravated damages (viii) damages for defamation; (viii) interest and costs.
2. The Plaintiff's Statement of Claim filed on 29<sup>th</sup> March, 2019 articulated (i) the particulars of unlawful arrest; (ii) malice/absence of reasonable and probable cause; (iii) particulars of defamation; (iv) misfeasance (v) particulars of injury to feelings; (vi) particulars of aggravated and exemplary damages; and (vii) particulars of breach of constitutional rights. The Plaintiff claimed a plethora of relief identical to what appeared in the Writ of Summons including the following (which was not claimed in the Writ); (i) a declaration that the Defendants decision to suspend and proffer complaint charges against the Plaintiff without due process if unlawful; (ii) a declaration of conspiracy to injure the Plaintiff; (iii) a declaration that the Plaintiff failed to adhere to the rules of natural justice and fairness; and (iv) a declaration that there was a breach of the Plaintiff's rights to due process pursuant to Regulation 40 of the Judicial and Legal Services Commission.
3. On the 24<sup>th</sup> July, 2018, the Defendants denied the claim and filed a Defence in this action.

### **Facts**

4. On the 1<sup>st</sup> September, 2016 the Plaintiff was in the Central Detective Unit (CDU) and while having a conversation with a fellow colleague about the arrest and detention of Maria Daxon, he stated that they should free Maria Daxon and said "no justice no peace". He said that another colleague was passing and heard him when he said this and afterwards he left the office for the day. He received a call later in the day to return to the office to see then Chief Superintendent Clayton L. Fernander who questioned him in relation to the earlier statements that he made.
5. He attended at the Police Headquarters where he was confronted by the Commissioner of Police and other senior police officers. During this confrontation he alleged that he was defamed. He was instructed to hand over his firearm certificate and entry key and advised to not enter any police station or go in any police vehicle or carry any firearm until further advised. The Commissioner of the Police requested that an entry be made in the diary at CDU. He was directed to report to the Police Headquarters on the 5<sup>th</sup> September, 2016 and was referred to the Chaplain, Father Stephen Davies who recommended that he attend at Dr. Barrett for an evaluation which he did. He was suspended for twelve weeks and

upon his return to the office he was transferred to another department. He claimed that he suffered emotional stress and embarrassment after his colleagues discovered what had happened. Additionally, he claimed that officers would huddle and talk about him and that one officer told him that no one wanted to work with him after they had heard he was a gangster who hangs with criminals. These were the words he alleged were spoken to him by the Fifth Defendant.

### **Issues**

6. I agree with the parties that the following issues are to be considered by this Court:
- (i) Whether the Plaintiff was unlawfully arrested by the Defendants?
  - (ii) Whether there was a breach of the Plaintiff's constitutional rights?
  - (iii) Whether the Plaintiff was defamed by the Fourth and Fifth Defendants?
  - (iv) Whether the Plaintiff is entitled to damages.

### **The Plaintiff's Evidence**

7. The Plaintiff's witness statement tendered as his evidence-in-chief remained substantially uncontroverted and generally are set out in paragraphs 4 and 5 above.
8. There are two issues arising from the facts which I must decide from the evidence. They are: (i) whether the Plaintiff was unlawfully arrested and (ii) whether the words used by the Defendants were defamatory.

#### **(i) Unlawful Arrest**

9. The Plaintiff gave evidence of how he was summoned to the Office of then, Chief Superintendent Clayton Fernander and upon arrival he was questioned as to his statement made earlier that day. Thereafter, he was informed that he was going to see the Commissioner of Police at the Police Headquarters, East Hill Street. The Plaintiff testified that he requested to drive his vehicle and was denied. As a result, he was transported in an unmarked police jeep accompanied by the First, Second, and Third Defendants.
10. As it relates to his claim for unlawful arrest he had this to say in his evidence-in-chief:

*"9. The third Defendant then instructed the first and second Defendants to take me to Police Headquarters. I asked if I can drive my own vehicle and was told no. I then asked if I was under arrest because I have a freedom of movement and that I am not being allowed to move freely. I was then told that these are instruction and nothing else.*

*10. I was forced to go with the first, second and third defendant. I was placed in an unmarked police jeep where I sat in the seat that we normally transport suspects or prisoners. I told them that this is not right but they said nothing in response. I was*



*taken to Police Headquarters against my will and had no idea as to the reason I was being taken there."*

11. Under cross examination the Plaintiff maintained his story, that he had no option and no choice as to his means of transportation from the Criminal Detective Unit (CDU) to the Police Headquarters but to go travel in the same vehicle as the First, Second and Third Defendants.

**(ii) Defamation**

12. The Plaintiff in his evidence-in-chief stated that at Police Headquarters he was confronted by then Commissioner of Police Ellison Greenslade, the Fifth Defendant, the First Defendant, the Second Defendant, the Third Defendant, the Fourth Defendant, Anthony Ferguson, Stephen Dean, Stephen Seymour and Juanita Colebrooke and that during the meeting, the Fourth and Fifth Defendants made negative statements about him:

- (a) The Fifth Defendant said, "I am disappointed in you. You are not loyal."
- (b) The Fourth Defendant said, "yes, you are not fit to wear the uniform."
- (c) The Fourth Defendant said "you are a gangster, you hang with criminals, you be with those criminals in Pinewood Gardens. You should go hang with Duran Neilly and his crew and alleged contract killer."

13. During cross examination on this issue of defamation he reiterated his story and confirmed that he was defamed in the presence of senior police officers and two inspectors.

**Third Defendant - Chief Superintendent Clayton Leroy Fernander**

14. The Third Defendant alleged that on the day in question, after being informed of the Plaintiff's "erratic, disorderly behaviour" he called for a meeting to inquire about what took place earlier in the general area. Further, alleging that during the meeting the Plaintiff was aggressive and sometimes apologetic it was followed by a meeting with the Commissioner of Police. The Third Defendant testified that the Plaintiff was not given a set time for the meeting as the Commissioner only advised that it was to be held on an urgent basis. The Third Defendant's evidence is that he advised that they all ride together to headquarters and it was agreed by everyone including the Plaintiff. The Third Defendant also testified that he would not have objected to the Plaintiff driving his own vehicle if that was his wish. His recollection of the meeting at headquarters was the conversation between the Commissioner of Police and the Plaintiff to ascertain what exactly occurred at CDU, and that the Commissioner expressed disappointment with the Plaintiff's behaviour. He denied that the Plaintiff was called disloyal or a criminal. As a result, the Fifth Defendant instructed that his firearm certificate be taken away for safety reasons until further notice. He also testified that the Commissioner recommended that the Plaintiff return the office keys and take some time away from

work until further notice. Additionally, an entry was made in the diary prohibiting the Plaintiff access to firearms.

**Second Defendant - Inspector Michael Johnson**

15. The Second Defendant testified that he heard some shouting from his office on the eastern end of the building which prompted him to walk out front in the general area. He claimed to have witnessed the Plaintiff screaming "Free Maria Daxon! No Justice! No Peace!" while hitting on the walls of CDU. His evidence is that he spoke to the Plaintiff concerning his disorderly behaviour but that the Plaintiff continued on. At this point, he went upstairs to report the incident to the Third Defendant and was instructed to locate the Plaintiff so he could be taken to the Commissioner of Police at the Police Headquarters.
16. The Second Defendant recalled that when the Plaintiff was informed that he was summoned to headquarters, he did not request to drive his own vehicle and that the Plaintiff, First, Second, and Third Defendant all drove together. He was also present during the meeting and testified that the Commissioner questioned the Plaintiff about his behaviour, and the Plaintiff gave an explanation and an apology for his actions. [He denied that the Plaintiff was called a criminal or disloyal.

**Issue I: Whether the Plaintiff was unlawfully/wrongfully arrested by the Defendants**

17. Article 19 (1) of the Constitution provides for the protection of a person's liberty. It sets out the circumstances where a person may be deprived of his personal liberty and at 19(2) it sets out the circumstances where a person who is arrested or detained must be informed of the reasons for his arrest or detention.
18. It was pellucid from the evidence that the Plaintiff was not reasonably suspected of having committed, or being about to commit a criminal offence which would cause the Plaintiff's transportation from CDU to the Police Headquarters to be lawful. The Plaintiff was not permitted to drive in his own vehicle and was unaware of the reason or purpose of his meeting with the Commissioner of Police.
19. The Plaintiff's Counsel made the following submissions:

*"In the instant case the Defendants without reason demanded that the Plaintiff go with them and not allowing him the option of using his own vehicle. He was then taken to Police Headquarters while his movement was being restricted by the Defendants. These actions were contrary to Article 19(1) as the arrest was not supported by any of the exceptions under Article 19. Therefore, I submit that the arrest was unlawful in the circumstances."*



20. In support of the claim for unlawful arrest, Counsel for the Plaintiff relied on the case of ***Gilford Lloyd v Chief Superintendent Cunningham et al 2016/CLE/GEN/00062*** where Charles J at paragraph 40 of the judgment said:

*“No doubt an unlawful arrest is a false imprisonment, and if the requirements of the law as to making it clear to the arrested person that he is under lawful restraint, or informing him promptly of the grounds of his arrest, or taking him before the appropriate authorities within a reasonable time are not complied with, an arrest which might otherwise have been justified will be unlawful and ground an action for false imprisonment.”*

21. During cross examination, the Plaintiff said :

*“ I was taken in that jeep because I was instructed to go in that jeep to Police Headquarters along with the then Chief Superintendent and the two inspectors. That was my instructions...I was told to come let's go. I had no choice in the matter.”*

22. He also testified that when he asked whether he could drive his own vehicle to Headquarters his request was denied. It is undisputed that the Plaintiff, the Second and Third Defendants all rode together in the unmarked police jeep to the Police Headquarters.

23. The Second and Third Defendants testified that they do not recall the Plaintiff request to drive his own vehicle to the meeting and there was no issue with him doing so.

24. During cross examination the Second Defendant testified:

*“ I was told my Mr. Fernander at the time, along with Mr. Roberts – the First Defendant – to locate Mr. Neely and so we can take him up to Headquarters... I was told to find Sergeant Neely so he can be taken to Headquarters.”*

25. In my opinion, the words ‘take him’ and ‘so he can be taken’ seems to been words that lead to restriction. The Plaintiff testified that he was not given any choice and the instructions and order given clearly indicates that the Plaintiff was perhaps prohibited from driving his vehicle to the Police Headquarters.

26. The Third Defendant testified that had the Plaintiff made a request to drive, he would not have been denied the right to do so, however, the evidence of the Second Defendant appears contrary.

27. I accept the evidence of the Plaintiff.

28. I find the case of ***Christie v Leachinsky [1947] 1 All ER 567*** very helpful. Lord Viscount Simon affirmed a number of propositions necessary in determining the lawfulness of an arrests or false imprisonment. It reads as follows:

*"1. If a policeman arrests without warrant on reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.*

*2. If the citizen is not so informed, but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment.*

*3. The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.*

*4. The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed.*

*5. The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g., by immediate counter-attack or by running away."*

29. Charles J in **Gilford** cited the case of **Bostien v Kirpalani's Ltd (1979) High Court of Trinidad and Tobago, No. 861 [unreported]** where Deyalsingh J explained :

*"... to constitute false imprisonment there must be restraint of liberty...a taking control over or possession of the plaintiff or control of his will. The restraint of liberty is the gist of the tort. Such restraint need not be by force or actual physical compulsion. It is enough if pressure of any sort is present which reasonably leads the plaintiff to believe that he is not free to leave, or if the circumstances are such that the reasonable inference is that the plaintiff was under restraint even if the plaintiff was himself unaware of such restraint. There must in all cases be an intention by the defendant to exercise control over the plaintiff's movement or over his will, and it matters not what means are utilized to give effect to this intention..."*

30. While I accept that the custom may be that a Commissioner of Police can summon an officer under his command at any time, I am still reminded of the importance of an individual's constitutional rights. Therefore, even if the Plaintiff was summoned he had a right to determine his means of transportation to attend the meeting with the Commissioner of Police.

31. I believe that the Plaintiff's movement was restricted when he was not allowed to drive his own vehicle to the meeting. Additionally, considering the principles found in the authorities



above, the Plaintiff was not informed of any reason why he was summoned to the Police Headquarters. Although it is possible to infer the reason based on the earlier incident, he had a right be advised of the same. Therefore, I find that the taking of the Plaintiff to the Police Headquarters amounted to a wrongful arrest and detention and that it infringed the Plaintiff's right to liberty and freedom of movement.

**Issue II: Whether there was a breach of the Plaintiff's constitutional right pursuant to Article 19 (1) and (2)**

32. I therefore, find for the reasons articulated in the previous paragraphs that the Plaintiff was wrongfully arrested and detained. Accordingly, I also find that there was a breach of the Plaintiff's constitutional right pursuant to Article 19 (1) and (2).

33. I adjourn the hearing of the assessment of damages to another date.

**Issue III: Whether the Plaintiff was defamed by the Fourth and Fifth Defendants**

34. In order to prove the tort of defamation, the Plaintiff must establish the following three elements:

- (i) That the words used were defamatory;
- (ii) That the words referred to the Plaintiff;
- (iii) That the words were published or spoken to one or more persons other than the Plaintiff.

35. The Plaintiff testified that on 1<sup>st</sup> day of September, 2016 at the Police Headquarters, he was defamed by the Fourth and Fifth Defendants. His evidence is that during the meeting with the Fifth Defendant, the following defamatory statements were made by the Fourth and Fifth Defendants:

- "I am disappointed in you. You are not loyal."
- "Yes you are unfit to wear the government uniform and should go hang with Duran Neely."
- "You are a gangster, you hang with criminals, and you be with those criminals in Pinewood Gardens. You should go hang with Duran Neilly and his crew of alleged contract killers."

36. In addition, he noted other Assistant Commissioners such as Anthony Ferguson, Stephen Dean, Stephen Seymour and Juanita Colebrooke were all present during the meeting with the named Defendants.



37. The test to be applied when determining whether words used are defamatory was cited in a number of cases over the years. In the well-known case of **Sims v Stretch [1936] 2 All ER 1237**, Lord Atkin identified the test and had this to say:

“The question, then, is whether the words in their ordinary signification are capable of being defamatory. Judges and textbook writers alike have found difficulty in defining with precision the word “defamatory.” The conventional phrase exposing the plaintiff to hatred, ridicule and contempt is probably too narrow. The question is complicated by having to consider the person or class of persons whose reaction to the publication is the test of the wrongful character of the words used. I do not intend to ask your Lordships to lay down a formal definition, but after collating the opinions of many authorities I propose in the present case the test: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?”

38. In **Stocker v Stocker - [2019] 2 WLR 1033**, the court had this to say :

“37 Clearly, therefore, where a range of meanings is available and where it is possible to light on one meaning which is not defamatory among a series of meanings which are, the court is not obliged to select the non-defamatory meaning. The touchstone remains what would the ordinary reasonable reader consider the words to mean. Simply because it is theoretically possible to come up with a meaning which is not defamatory, the court is not compelled to select that meaning.

38 All of this, of course, emphasises that the primary role of the court is to focus on how the ordinary reasonable reader would construe the words. And this highlights the court’s duty to step aside from a lawyerly analysis and to inhabit the world of the typical reader of a Facebook post. To fulfil that obligation, the court should be particularly conscious of the context in which the statement was made...”

39. That is to say, whether the ordinary reasonable reader would react to the words or statement in a way which reflected the circumstances surrounding how and or why it was made.

40. In a recent case **Lee v Brown [2022] EWHC (QB)** the court noted that the governing principle for the applicable test is based on ‘reasonableness’.

“The court’s task was to ‘determine the single natural and ordinary meaning of the words complained of, which was the meaning that the hypothetical reasonable reader would understand the words bear’. The governing principle was reasonableness. The intention of the publisher (that was, the speaker or writer) was irrelevant; the test focused on how words were read or heard, not how they came to be written or said. It was objective, not subjective. The court had to keep in mind the perspective of an ordinary, reasonable reader of emails or social media of the sort featuring in the present case (see [4]-[10] of the judgment).

*The test at common law for whether a (natural and ordinary) meaning was defamatory was well-established: whether it substantially affected, in an adverse manner, the attitude of other people towards a claimant, or had a tendency to do so. That was not about actual impact at the present stage, it was about the meaning of the words and their inherent tendency to damage someone's reputation. 'Substantially' imported a threshold of gravity or seriousness. Some of the modern cases on defamatory tendency thought about it in terms of suggestions that a claimant had contravened important shared social norms."*

41. This principle was also sufficiently gleaned from *Sims* and *Stocker* cases above; also by then President of Appeal Justice Anita Allen in *Garvin Gibson and Cable Bahamas Ltd. SCCivApp 229 of 2012* at paragraph 16.
42. The Plaintiff did not call any witnesses to corroborate his allegations of defamation and the Second and Third Defendant denied that any of the Defendants uttered them.
43. However, even if the Court was minded to believe on the balance of probability that the words were spoken to the Plaintiff, the Court must also consider the context in which they were so spoken.
44. I am reminded that the Plaintiff was summoned to an urgent meeting with the Fifth Defendant to discuss what had been referred to as erratic behavior by the Plaintiff earlier in the day. The private meeting included other senior police officers (some of whom are parties to this action), therefore, they would have been unreserved, honest and remarkably candid. Therefore, it can be inferred that the words spoken by the Defendants to the Plaintiff expressed extreme displeasure and dissatisfaction with his earlier behaviour and were not meant to be taken literally.
45. Accordingly, I find that the context of the manner in which the words complained of were spoken leads me to the finding, as I hereby do find, that the said words were nothing more than vulgar abuse incapable of affecting the estimation of right thinking persons who may have heard the words uttered in relation to the Plaintiff. The claim for defamation therefore fails.
46. However, for the sake of completeness, I consider the remaining elements of defamation.
47. The second element is whether the words referred to the Plaintiff. In the case of *Knupffer v London Express Newspaper Ltd* ([1944] 1 All ER 495, Lord Viscount Simon at page 496 said:

*"Where the plaintiff is not named, the test which decides whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to."*



48. There was no debate that only the Plaintiff and the Commissioner of Police and other senior police officers were in the meeting therefore, the second element is easily satisfied.

49. Now, it must be determined whether the words were published or spoken to one or more persons other than the Plaintiff. In **Bryne v Deane [1937] 1 All ER 204**, Greene LJ at page 212 said:

*“Now, on the substantial question of publication, publication, of course, is a question of fact, and it must depend on the circumstances in each case whether or not publication has taken place.”*

50. The meeting was a private meeting of senior officers in the Royal Bahamas Police Force and therefore, there were no third parties in attendance. In those circumstances, the Plaintiff has failed to prove publication, an essential ingredient in a claim for defamation.

### **Issue III: Whether the Plaintiff is entitled to damages**

51. Article 19(4) of the Constitution states that:

*“Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.”*


52. Having found that the Plaintiff was unlawfully arrested, I find that he is entitled to damages which are to be assessed.

### **Conclusion**

53. I make the following orders:

- (i) I find that the Plaintiff was unlawfully arrested and therefore, his constitutional rights pursuant to Article 19(1) have been breached;
- (ii) I adjourn the assessment of damages for this breach to another date;
- (iii) I find that the Plaintiff has failed to prove his claim for defamation;
- (iv) Costs to be fixed after hearing submissions from Counsel at a date convenient to the parties.

**Dated the 20<sup>th</sup> day of March A.D., 2023**



**Camille Darville Gomez**

**Justice**